

Applicants respectfully disagree with the Examiner and respectfully ask the Examiner to reconsider his position. Specifically, Applicants believe that Figures 1-4 read on at least Claims 1-3 and 8. Therefore, at least Claims 1-3 and 8 are believed to be generic claims. With specific reference to Claim 1, the end effector assembly (100) includes first and second jaw members (110, 120), which include an elastomeric material (114, 124) disposed on an inner facing tissue contacting surface (115, 125), each of the elastomeric materials include an electrode (116, 126) disposed therein and each of the electrodes are offset a distance X relative to one another. Each of these claimed features is illustrated in Figures 2-4. Additionally, the electrosurgical instrument (10) is illustrated in Figure 1. Therefore, Figures 1-4 read on at least Claims 1-3 and 8.

As advised by the Examiner, Applicants hereby provisionally elect, without traverse, the claims directed to the species of Figure 2 for prosecution on the merits. It is respectfully submitted that Claims 1-5 and 7, 8, and 10-13 read on the elected species and, as stated above, Claims 1-3 and 8 are generic. Upon allowance of the generic claims, Applicants hereby reserve the right to the consideration of claims to additional embodiments which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. §1.141. Applicants further reserve the right to file continuation applications and/or divisional applications on any non-elected species.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicants' undersigned attorney at (631) 501-5708.

Respectfully submitted,



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